

LAKE COUNTY BOARD of ADJUSTMENT
Sept. 11, 2019
Lake County Courthouse Commissioners Office (Rm 211)
Meeting Minutes

MEMBERS PRESENT: Don Patterson, Steve Rosso, Mary Jensen, Mike McKee

STAFF PRESENT: Jacob Feistner, Rob Edington, Clint Evenson, Lita Fonda

Don Patterson called the meeting to order at 3:31 pm

KOENIG CONDITIONAL USE—FINLEY POINT (3:31pm)

Rob Edington presented the staff report. (See attachments to minutes in the Sept. 2019 meeting file for staff report.) Rob confirmed that the stormwater plan was currently under review. One condition was that this be reviewed and approved prior to issuance of zoning conformance. The agent for the project concurred with the staff report.

Public comment: Don noted no public were present to comment.

On pg. 6, #4.a, Steve added 'near' prior to 'the neighboring properties'.

Motion made by Steve Rosso to approve the conditional use along with findings of fact and conditions. Mike McKee seconded, affirming that, if necessary, the Planning Board had the authority to increase the size of the disturbed area as proposed. Steve added that to his motion. Mike checked that was what Rob had said. Rob noted it wasn't included as a condition. He'd [listed the disturbance amount] at 2,056. Steve asked the agent how they felt about 2,056. Did they need 2,100? Earl thought having a little extra was good. Motion withdrawn by Steve Rosso. On pg. 8, #2, Steve changed 2,056 to 2,100.

Motion made by Steve Rosso, and seconded by Mike McKee, to approve the conditional use along with amended findings of fact and conditions. Motion carried, all in favor.

FUNK VARIANCE—FINLEY POINT (3:43 pm)

Clint Evenson presented the staff report. (See attachments to minutes in the Sept. 2019 meeting file for staff report.) He pointed out that attachment 9 wasn't listed in #1 on pg. 2. He had provided attachment 9 for the new building layout when it was received after the staff report had been submitted. The main difference was the previous building layout in attachment 5 showed the loft being entirely living area. The new layout showed the loft had a reduced living area, with the remainder of the area being storage.

Clint answered questions from Steve, confirming that the change in the loft shrunk the size of the guest house to 996 square feet. Staff were still working with the applicants' agent regarding resolution for the hot tub and the stormwater draining on the neighbor's property. He wasn't familiar with what the hardship was, associated with moving the guest house from the east end to the west end of the building.

Mary confirmed with Clint that they were dealing with the carport and the guest house. They weren't dealing with the hot tub situation or the runoff onto another property. It seemed like the runoff needed to be addressed before the Board approved something like this.

Agent Earl Hanneman of Carstens & Associates referred to a pre-existing drain system for runoff from the house. The applicant had an updated electrical line put in. It cut up the pipes, which the applicant repaired.

Wayne Funk added detail. He didn't realize that he needed a permit for the hot tub or that there was a restriction, and apologized. He didn't realize the basement wasn't tarred. Apparently it was kept from leaking in the past by pipes that diverted the water away from the foundation. When they put in the new electrical system, it started leaking. He dug up the whole line and put in new pipe. He left it exposed because he didn't want the line cut when new landscaping that he planned was put in. He didn't have a problem cutting it back and putting a drain there. His engineer thought he'd need a more sophisticated drainage system. He appreciated the last approval. He decided [the guesthouse] would be better on the other side because Hwy 35 was a busy road. Some of his kids who had little tiny children might use the guest quarters and it was closer for them to wander onto the busy highway. It was helpful to keep them back a little bit. It would also be a little quieter a little farther back from the road with the garage as a buffer.

Wayne said when the Board gave him the last permit, they mentioned one part of the eave was over the property line. He believed he wasn't touching the property line where the carport was. It was 8 or 9 inches off. He guessed that the eave extended over 6 or 8 inches. As part of the other approval, he needed to install rain gutters and divert [the water]. The rain gutters from the last time didn't divert the water like it was supposed to. It was, but they took them apart from driving in there, so he still needed to pipe those the right direction, away from the neighbor's property. He didn't realize the hot tub was against the rules and reported his neighbors didn't have a problem with that. They would give him something in writing, if that was helpful down the road. They were in Norway. They were pleased with him fixing up the house from 1960. [He and his family] thought it was a beautiful place. They weren't going to come often. When they did, they'd be bringing some of their family and wanted it to be safe. They appreciated what [the Board] had done and were going to try to conform with whatever [the Board] said was right or what they needed to do. He was a builder by trade in another state.

Wayne said they'd done the [application] several times. The original one didn't have the covered deck [on the house]. It had the deck conversion. He thought it was on the original one but the later septic didn't have it. Earl said the original didn't have it when they turned it in. They updated it. Wayne said when they updated the deck, he decided to have it covered because of the winters here. It would be more useable year-round with less wear and tear on stuff. Steve said that affected the zoning conformance permit but not the variance. Earl added that was part of the noncompliance and the after the fact.

Wayne said they got a permit on it but he thought it was for the covered one. He apologized.

Public comment: Don noted no public were there to comment.

Steve thought the building had looked like photo 3 in attachment 3 and still did. They were going to turn the double garage into guest quarters, which was what they came in for last time. Now they wanted to enclose the carport and he indicated where the guest quarters were desired. Mary added they wanted to keep the two-car garage.

Concerning items 6 and 7 on pg. 3, Earl said they were asking to change the usage, not the structure. The structure would remain the same. They were adding walls to change it from a carport to a guest house. A guest house was within the Finley Point regulations. They wanted to remove the part of the building that overhung the boundary line, and shorten the roof, which would also shorten the rain gutters from the previous approval. The water would be brought around onto the applicant's property.

Mary described that the rain gutter and downspout would not be going off to the right of the photo. It would swing around and come to the side of the new wall. How would they prevent that runoff from going onto the neighbor's property? Wayne said they put the rain gutter on the main garage, which was a different level roof than the carport, which still didn't have a rain gutter system on it. Steve and Mary said it was in the picture. Wayne said maybe it did. It was the lower level so it really needed to have one put on the side like they were talking about, and down. Normally you wanted to come off of a corner so you could hook to a post. There was only a post there, which was on the corner that was very close to the property line. It would need to be diverted back toward the house. If it was a problem, they could pipe it across the driveway to the other side. Mary concluded it would have a slope sending it in that direction. Earl said once you brought it around to the side, you could put in a chamber or a vault with vegetation around it so [inaudible] and it would keep it there. It was possible to do.

Steve checked if in May, there was discussion of trimming the roof off so it didn't extend on the neighbor's property. Wayne said it had always been like that. They didn't ask him to do that last time. They asked for rain gutters. He just put a new metal roof on it but he was willing to accommodate that.

In Attachment 4, photo 2, Steve referenced the stake with the pink ribbon on it. Earl confirmed that was the property line. Steve concluded there wouldn't be any eave or only a few inches, in order to bring the edge of the roof onto the applicant's property. Wayne thought it was a 1-foot eave right now. He thought it was 8 or 9 inches off of the corner. Earl explained that the garage was cockeyed so not all of it would have to come back. Steve outlined that if they were to reduce the eave to zero there, especially since they'd still need an eave trough there, which was 4 to 5 inches wide, the edge of the roof would need to be trimmed to the post. For a carport, rain getting on that carport really wasn't a problem. The reason for eaves on buildings was to protect the exterior wall

from the weather to some extent. If now they were going to enclose the carport and make this a solid wall, there'd be a building with a wall and no eave.

As he looked at this situation, Steve thought they were fortunate to get what they wanted in May with this situation. It was hard for him to see that moving the grandkids 25 feet farther from the highway and having it be a little quieter in the bedrooms was enough of a hardship to justify a variance like this. He agreed with the existing findings of fact, which were written to support denial. If the rest of the Board wanted to approve this, they would have to change the findings of fact. Clint pointed to the conditions on pg. 9. Staff recommended denial. If the Board wanted to approve, these [conditions] were provided. Steve suggested accepting the staff recommendation and deny, and also changed item f in the findings on pg. 7. He added a new sentence at the beginning of the italicized section: 'The neighboring properties are already adversely affected by the existing development.' He replaced 'adversely affect' in the next sentence with 'increase the degree of adversity affecting'. He thought the variance did affect the neighboring properties, which were already affected by the development.

Agent Marc Carstens proposed a 30-day tabling of the item. During this time, he intended to contact the neighbor to obtain an easement that would allow for the roofline to cover over an incidental rainfall. They would produce a better stormwater management plan. They preferred the idea of taking the stormwater towards Hwy 35 via gutter and then installing it into a rock-filled chamber with approximately 40% void. That way if someone did drive over it, it wouldn't cave in. It would take a little bit of time to take care of this.

Steve asked if that worked for the Planning staff. Jacob identified that this would be a new submittal but they would review it again. Marc said they heard and understood the concerns and would like a little more time to address them.

Mary checked if they'd considered tearing down and bringing this structure forward to eliminate the overhang. Marc replied if they took the building down, they would have to fully be within the building regulations, including building setback. This building was pre-existing here. If they could work with it in its place and gain the necessary easements from the adjoining landowner without contemplating a new structure, that would allow them to go forward. It was a very narrow lot with some interesting timberlines and so forth. In order to take advantage of the garage, it just about had to be where it was at. If it was moved sideways, you limited the accessibility to the main house and to the structure, plus compounding it with bringing it to today's setback standards. They did appreciate the comment. Wayne said this was very close to the property line when it was built in 1960. The water had always been draining to the neighbor. When the last [board item from Wayne & Lexie Funk] was approved, putting the rain gutters on and diverting some of the water away was definitely an improvement.

Jacob asked if they thought the adjacent property owner would be open to a boundary line adjustment so they could bring the hot tub, garage and stormwater management [into compliance]. Wayne said he could ask them. Marc said a perpetual easement would

assure the same kind of thing. His concern with a boundary line adjustment was that in the [exemptions], it had to comply with zoning so instead of a few feet to clear incidental rainwater and eaves, they could be talking about a complete setback, which could take a pretty good bite out of the neighbor's property. They would look at both ways. An easement might have less impact on the neighbor than the sale of 10 or 12 feet to accommodate zoning setback. Jacob remarked that if it complied, it might be cheaper than remodeling the garage and removing the hot tub. Marc asked if staff would find a perpetual easement appropriate. Jacob replied that it didn't change the setback. Marc agreed, but it did answer the trespass situation. Jacob said a boundary line adjustment could potentially solve both problems. Marc agreed but thought people along the lake were hesitant to give up significant portions of their property. The nice thing about easements was they could be perpetual or written with a sundown clause. The sundown clause would be that if the structure was destroyed by some naturally occurring disaster, it could never be built back in the same place. There were benefits to the easement that could be long term but a terminal point could be involved too.

Steve thought if they went the easement route, they would still have to apply for a variance because they were still in the setback. They would be gambling a bit on what the Board's decision would be, based on that. He thought there was a chance that the Board would look more favorably at the situation if there was an easement granted. If the Funks bought a strip of property, they wouldn't have to apply for a variance. Marc said as they went forward with the unknown response of the adjoining landowner, they wanted to retain as many options as possible. Steve thought if they tabled it, they could leave the timeframe open. Marc checked they would need an amended application. Jacob said it would be a new submittal.

Motion made by Steve Rosso, and seconded by Mary Jensen, to table the variance at the request of the landowner. Motion carried, 3 in favor (Don Patterson, Mary Jensen, Steve Rosso) and one abstention (Mike McKee).

MINUTES (4:20 pm)

May 8, 2019:

Pg. 7, 5th line of last full paragraph prior to corrections: Steve changed 'of record' to 'on record'.

Motion made by Steve Rosso, and seconded by Don Patterson, to approve the May 8, 2019 meeting minutes as amended. Motion carried, 3 in favor (Don Patterson, Steve Rosso, Mary Jensen) and 1 abstention (Mike McKee).

July 10, 2019:

Pg. 2, 3rd line of first paragraph: Steve deleted 'were' after 'conditions'.

Pg. 5, 3rd line of first paragraph: Steve corrected 'bath' to 'bathe'.

Pg. 6, 4th paragraph: Mike added 'due to the fact that they had constructed a large building near the property line which created a significant visual impact from the Brimhall property.' Lita noted she would likely put it in brackets.

Motion made by Steve Rosso, and seconded by Mike McKee, to approve the July 10, 2019 meeting minutes as amended. Motion carried, all in favor (Don Patterson, Steve Rosso, Mary Jensen, Mike McKee).

August 14, 2019:

Pg. 3, first line of 2nd paragraph: Steve deleted 'removed'.

Pg. 3, 2nd line of 6th paragraph: Steve changed 'reason that' to 'reason than'.

Steve confirmed with Lita that 'Ried' was the proper spelling in the 6th paragraph.

Motion made by Steve Rosso, and seconded by Mary Jensen, to approve the August 14, 2019 meeting minutes as amended. Motion carried, all in favor.

OTHER BUSINESS (4:27 pm)

None.

Don Patterson, chair, adjourned the meeting at 4:27 pm.